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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4897 OF 2005

1. Sahara Fabrics Pvt. Limited,
a Private Limited Company, duly
incorporated and registered under
the provisions of the Companies
Act, 1956, having its registered
office at No.3, Rajshila Chambers,
597, Girgaum Road, Mumbai - 2.

2. Satish S/o. Janakraj Kapoor,
aged 55 years of Bombay, Indian
Inhabitant residing at Flat No.4,
2nd floor, 47/C, Kala Niketan,
Bhulabhai Desai Road, Mumbai - 26
and having office at 3, Rajshila
Chambers, 597, Girgaum Road,
Chira Bazar, Mumbai - 2.

3. Sharda W/o. Satish Kapoor,
aged 55 years of Bombay Indian
Inhabitant, residing at Flat No.4,
2nd floor, 47/C, Kala Niketan,
Bhulabhai Desai Road, Mumbai - 26.

4. Shailendra S/o. Satish Kapoor
aged 28 years of Bombay Indian
Inhabitant residing at Flat No.4,
2nd floor, 47/C, Kala Niketan,
Bhulabhai Desai Road, Mumbai - 26. .. Petitioners

Versus

1. Smt. Kailash W/o. Ramprashad Mehra
aged 76 years of Bombay Indian
Inhabitant, residing at A/8, 4th
floor, Sneh Sadan, Navrojee Gamadia
Road, Bombay - 26.

2. Shri Arvind S/o. Ramprashad Mehra
aged 47 years of Bombay, Indian
Inhabitant, residing at A/8, 4th
floor, Sneh Sadan, Navrojee Gamadia
Road, Bombay - 26 and having his
office at 609, Girgaum Road, 1st
floor, Singapuri Building, Bombay-2. .. Respondents

Mr. K.A. Shah with Tayaat Gaikwad i/b Mr. Ajay Khandar & Co. for the petitioners.

Ms. Shakuntala Joshi for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 29TH AUGUST, 2005.

P.C.:-

1. The petitioners are original defendants in S.C. Suit No.6882 of 2000 filed in the City Civil Court at Bombay.

The suit was filed for the following reliefs.

> "(a) That this Hon'ble Court be pleased to declare that plaintiff no.1 is the sole owner of 59 shares of defendant no.1 and plaintiff no.2 is the owner of 216 shares of defendant no.1.
>
> (b) That this Hon'ble Court be pleased to declare that appointment of defendants no.3 and 4 as Directors of defendant no.1 is illegal, null and void and of no consequences whatsoever.
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> (c) That this Hon'ble Court be pleased to declare that any acts, deeds and/or things of any nature whatsoever done by defendant no.1 company in pursuance of the alleged appointment of defendants no.3 and 4 as the Directors and/or any other act, deed, thing done

by defendants no.3 and 4 in exercise of powers in the alleged capacity as Directors of defendant no.1 is illegal, null and void and not binding.

(d) That this Hon'ble Court be pleased to declare that any resolutions allegedly passed in any purported meeting of shareholders or of Board of Directors of defendant no.1 allegedly held by the Kapoor family or any of them is illegal, null and void and of non consequence, whatsoever.

(e) That this Hon'ble Court be pleased to issue a permanent order and injunction thereby restraining defendants no.3 and 4 their agents, servants and/or any person acting under or or their behalf from acting as Director of defendant no.1.

(f) That this Hon'ble Court be pleased to issue a permanent order and injunction restraining defendants no.1 to 4, their officers, servants, agents and/or any person acting under or on their behalf from in any manner acting

in pursuance of any alleged resolutions allegedly passed in any purported meeting of Board of Directors allegedly held by the defendant no.2 to 4 or any of them.

(g) That this Hon'ble Court be pleased to declare that plaintiff no.1 has validly transferred 49 shares of defendant no.1 and plaintiff no.2 has validly transferred 206 shares of defendant no.1 in favour of defendant no.5.

(h) That this Hon'ble Court be pleased to order and decree directing defendant no.1 to register the transfer of 49 shares of defendant no.1 by plaintiff no.1 and 206 shares of defendant no.1 by plaintiff no.2 in favour of defendant no.5.

(i) That this Hon'ble Court be pleased to order and decree defendants no.2 to 4 to handover to the plaintiffs the original certificates of 59 and 216 shares of defendant no.1.

(j) That this Hon'ble Court be pleased to

in the alternative to prayer clause (h) above, direct defendant no.1 to issue duplicate share certificates t the plaintiffs for 59 shares and 216 shares respectively of defendant no.1."

2. In that suit, the plaintiffs took out a notice of motion for interim reliefs. The defendants challenged the jurisdiction of the City Civil Court to entertain and try the suit. The trial court framed the issue regarding jurisdiction. By the impugned order, the trial court answered the said issue of jurisdiction in the affirmative and, hence, this writ petition by the defendants.

3. I have heard Mr. Shah, the learned counsel for the petitioners, at great length. He contended that to decide whether the civil court has jurisdiction to entertain the suit, it is necessary to see what is the cause of action. Mere reading of the prayer would not be sufficient. He submitted that if a statute provides for a Tribunal and that Tribunal is required to deal with a particular cause of action, that would oust the civil court's jurisdiction. According to the learned counsel, prayers in the suit seek reliefs which are based on the rights and obligations under the Indian Companies Act, 1956 (for short, "the said Act"). He submitted that for the grievances made in the plaint, reliefs are provided

under the said Act. As per the provisions of the said Act, the Company Law Board is the Forum to which the party must approach. He submitted that the Company Law Board has wide powers like a civil court to grant reliefs and, therefore, though there is no specific bar to the jurisdiction of the civil court, impliedly the civil courts jurisdiction is barred. To substantiate his contentions, he drew my attention to certain provisions of the said Act. He first referred to section 111 of the said Act, which provides for company's power to refuse registration and appeal to the Company Law Board against its refusal. He pointed out that under section 111(4)(a)(b), if a member's name is entered in the register of companies or omitted therefrom, without sufficient cause, the aggrieved person may approach the Company Law Board for rectification. The learned counsel pointed out that in the instant case, the shares are physically transferred to defendant 2 and defendant 3. The plaintiffs contend that this entry is fraudulent and since appeal is provided to deal with such a contingency before the Company Law Board, the civil court's jurisdiction is barred. The learned counsel then drew my attention to section 397 of the said Act, which provides that in cases of oppression, any member of the company can make an application to the Company Law Board. He also referred to section 398 of the said Act, which provides that in case of mismanagement, any member can complain to the Company Law Board. He then drew my attention to section 402 of the said Act which states

what are the powers of the Company Law Board on application under sections 397 or 398 of the said Act. The learned counsel pointed out that under section 403 of the said Act, the Company Law Board can pass interim orders and under section 405 thereof, a person can also make application praying that he may be joined as a party. He also drew my attention to sections 539 and 540 of the said Act, which provide for penalty for falsification of books and penalty for fraud committed by officers. He also drew my attention to section 542 of the said Act which speaks about the powers of the Company Law Board to fasten liability for fraudulent conduct of business. The learned counsel urged that the Company Law Board's powers are as wide as that of the civil court and, therefore, in the present case, the plaintiffs ought to have approached the Company Law Board because the jurisdiction of the civil court is impliedly barred.

4. In support of the submission, the learned counsel relied on the judgment of the Supreme Court in **Dhulabhai etc. v. State of Madhya Pradesh and another, AIR 1969 SC 78** wherein the Supreme Court has summarised the law relating to exclusion of jurisdiction of the civil court. He contended that though the exclusion of the jurisdiction of the civil court is not to be readily inferred, if the conditions laid down by the Supreme Court in this case are present, the civil court jurisdiction would be excluded. According to the learned counsel, the ratio of this case is not properly

appreciated by the trial court. The learned counsel also relied on the judgment of the Supreme Court in **Gundaji Satwaji Shinde v. Ramchandra Bhikaji Joshi, (1979) 2 SCC 495** where the Supreme Court has held that the exclusion of the jurisdiction of the civil court is not to be readily inferred and such exclusion must be explicitly expressed or clearly implied. But the civil court has no jurisdiction to decide an issue arising incidentally in a civil suit which is to be specifically decided by the competent authority under a particular statute.

5. The learned counsel for the petitioners as well as the learned counsel for the respondents drew my attention to the judgment of the Division Bench of this court in **Santosh Poddar & another v. Kamalkumar Poddar & others, 1992 (3) Bom.C.R. 310** and tried to draw support from it. I shall advert to this judgment, a little later. In the light of the provisions of the said Act and in the light of the above judgments, Mr. Shah the learned counsel contended that the impugned order be set aside as the civil court has no jurisdiction to entertain the suit.

6. Ms. Joshi, the learned counsel for the respondents on the other hand submitted that in the suit, the plaintiffs are agitating their individual rights under common law and such a suit is always maintainable. She contended that the ratio of the judgment of this court in **Santosh Poddar's case (supra)** is clearly attracted to this case and, therefore, the impugned order does not

merit any interference.

7. In **Dhulabhai's case (supra)** the Supreme Court was considering the question of exclusion of jurisdiction of the civil court to entertain a suit in the context of section 17 of the M.B. Sales Tax Act which bars the jurisdiction of the civil court to entertain certain proceedings. The principles laid down by the Supreme Court which have a bearing on the present case are as under:

> "(1) Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.
>
> (2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is

not decisive to sustain the jurisdiction of the civil court. Where where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether, remedies normally associated with action in civil courts are prescribed by the said statute or not.

(3) x x x x x x

(4) x x x x x x

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality

are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

8. In **Santosh Poddars' case (supra)**, the Division Bench of this court was dealing with a suit where the plaintiffs had prayed for a declaration that defendant 1 therein had ceased to be a director of Poddar Tyres Limited, defendant 3 therein, with effect from 31/12/1990. They sought a further declaration that all meetings of the Board of Directors of defendant 3 company held after 31/12/1990 and in particular, the meetings allegedly held on 23/3/1991 and 10/6/1991 are illegal, invalid, nonest and the resolutions passed at these meetings are illegal, invalid and nonest and not binding on defendant 3 company or the plaintiffs. A further declaration was sought that they continued to be the directors of defendant 3 company and their purported cessation as such directors is invalid, illegal, nonest and void. In yet another suit, similar declaration was sought. The suits were filed in the City Civil Court at

Bombay. The plaintiffs had taken out a notice of motion for interim relief. In the affidavits in reply filed by the defendants, a preliminary objection was taken to the jurisdiction of the City Civil Court to entertain and try the suits. The City Civil Court framed a preliminary issue as to whether it has jurisdiction to entertain and try the suit in view of the provisions of section 10 of the said Act read with the Notification dated 29/5/1959. This court referred to sections 2(11) and 10 of the said Act and came to the conclusion that whenever there is any reference under the said Act to any proceedings before a Court under that Act, (other than proceedings relating to an offence under the Act), the court which will have jurisdiction shall be the High Court or, if there is the requisite Notification, the District Court. However, there is no ouster of the jurisdiction of the City Civil Court in all cases where the provisions of the said Act may be attracted. It was further observed that it is only in respect of those proceedings which are expressly contemplated under the said Act under any specific provision that the court which is referred to in that section would be the special court, namely the High Court or the Notified District Court. In all other cases, ordinarily the civil courts would continue to have jurisdiction. In this behalf, the Division Bench placed reliance on the judgment of the single judge of this court in **Rao Saheb Manilal Gangaram Sindore v. M/s. Western India Theatres Ltd., LXIV Bom.L.R. 532**.

9. The Division Bench also referred to **Dhulabhai's case (supra)** and finally observed as under:

> "From the provisions of the Companies Act, we do not find anything by which we can infer that the jurisdiction of the Civil Court is ousted. The very fact that section 2(11) is part of the definition clause under the Companies Act under which a Court is defined to mean the Court as prescribed under section 10, clearly shows that whenever the term 'the court' is used in any section of the Companies Act, the term 'Court' will have to be interpreted with reference to section 10. These sections will have no application where any general civil suit is filed. The definition clause is attracted only when resort is had to a proceeding under the Companies Act under a section which prescribes resort to a Court. Under the Companies act, powers are conferred not only on Courts but also on other authorities like the Company Law Board, the Central Government and the Registrar. Where a power is vested by the Act in a Court, that Court has to be ascertained with reference to section 10. Beyond so specifying the Court competent to deal with

such a matter, section 10 cannot be construed as investing the Company Court with jurisdiction over every matter which may arise in respect of a Company or as divesting Civil Courts of their jurisdiction."

10. The trial court has placed reliance on this judgment and I find the reliance placed on this judgment to be apt. It is pertinent to note that in that case also, the declaration was sought that all meetings of the Board of Directors of defendant 3 company and the resolutions passed at these meetings are illegal, invalid and nonest and not binding on defendant 3 company or the plaintiffs and defendant 1 had ceased to be a director of Poddar Tyres Limited. A further declaration was also sought that the plaintiffs continued to be the directors of defendant 3 company and their purported cessation as such directors is invalid, illegal, nonest and void. In the present case also, a declaration is sought that the appointment of defendants 3 and 4 as directors of defendant 1 is illegal, null and void and of no consequence whatsoever and any acts, deeds and/or things of any nature whatsoever done by defendant 1 company in pursuance of the alleged appointment of defendants 3 and 4 as the directors and/or any other act, deed, thing done by defendants 3 and 4 in exercise of powers in the alleged capacity as directors of defendant 1 is illegal, null and void and not binding. A similar declaration is

sought that any resolutions allegedly passed in any purported meeting of shareholders or of Board of Directors of defendant 1 allegedly held by the Kapoor family or any of them is illegal, null and void and of no consequence whatsoever.

11. In my opinion, therefore, considering the prayers of the instant suit and the prayers which were before the Division Bench in **Santosh Poddar's case (supra)**, I have no hesitation in holding that the ratio of the said judgment is clearly attracted to the facts of this case and, there is no difficulty in holding that as held by the Division Bench in **Santosh Poddar's case (supra)**, the instant suit is maintainable. It is also pertinent to note that in the instant suit, there is also a prayer for directing defendant 1 to register the transfer of 49 shares of defendant 1 by plaintiff 1 and 206 shares of defendant 1 by plaintiff 2 in favour of defendant 5. It was argued that this pertains to powers to refuse the registration and appeal is provided against the said refusal to the Company Law Board and, therefore, for rectification of register of transfer, the civil suit is not the appropriate Forum but the plaintiffs will have to first approach the Company Law Board. The Company Law Board may relegate the plaintiffs to a civil court if it finds that disputed questions of law and facts are involved. I am unable to agree with the learned counsel on this point. In **Rao Saheb's case (supra)**, to which reference is made in **Santosh Poddar's case (supra)**, this

court has held that in matters of rectification, civil suit is maintainable. This submission of Mr. Shah must, therefore, fail.

12. I may also refer to yet another judgment of this court in **Shirish Finance and Investment Pvt. Ltd. & Ors. v. M. Sreenivasulu Reddy & others, 2002(1) Bom.C.R. 419**. It was strenuously contended by the learned counsel for the petitioners that this case is not applicable to the facts of this case because in that case, the point of jurisdiction was given up by the defendants and that fact was noted by the Division Bench. There can be no doubt about this fact. However, the court further noted that since the matter has been argued at length the court shall also consider those questions separately and the court has gone into those questions. In the circumstances, when the Division Bench has chosen to go into the question of jurisdiction and given categorical finding, I am unable to agree with the learned counsel for the petitioners that the opinion expressed by the Division Bench on the legal position cannot be considered by me. I am bound by the said expression of law and I shall refer to it in this case.

13. In that case, the Division Bench was considering section 155 of the said Act. Section 155 of the said Act vests jurisdiction in the company judge, and impliedly ousts the jurisdiction of the civil court in respect of rectification. After referring to **Raja Ram Kumar**

Bhargava v. Union of India, AIR 1988 SC 752, this court observed that this judgment is an authority for the proposition that if a pre-existing right in common law is recognised by the statute and a new statutory remedy for this enforcement provided, without expressly excluding the civil court's jurisdiction, then both the common law and the statutory remedies might become concurrent remedies. This court then referred to **Rao Saheb's case (supra)** and held that for the relief contemplated by section 155, a suit was the primary remedy under the general law. The relief contemplated by that section was one which was available at common law. Section 155 merely provided a statutory remedy. Its object was not to whittle down or abrogate the procedure by way of suit for getting the relief contemplated by that section.

14. After taking a resume of several judgments on the point, this court observed that the authorities on the subject do recognise the common law right of a shareholder to seek rectification of the register of members, and the jurisdiction of the civil court in appropriate cases is not barred where complicated questions of law and fact arise in an application for rectification under section 155 of the said Act and it is not possible for the court to grant relief without first adjudicating the disputed questions of law and fact. Relying on these observations, it was urged by the learned counsel for the petitioners that the plaintiffs have to first go to the Company Law Board and if the

Company Law Board comes to the conclusion that disputed questions of law and facts arise then the Company Law Board can relegate the plaintiffs to the civil court.

15. I do not find any such affirmative statement of law in this judgment. If the shareholder wants to agitate his common law right to seek rectification of register of members and it involves disputed question of facts and law, he can obviously go to the civil court directly. The court also dealt with section 111-A of the said Act and held that it would be difficult to contend that section 111-A took away common law right of a member to seek rectification on account of the transfer being in violation of a law in force. It was further observed that the jurisdiction of the court was not expressly excluded, nor section 111-A as originally enacted or even after its amendment, provided an adequate alternative remedy, or a machinery for the enforcement of the pre-existing right of a member recognised at common law, a test to determine whether exclusion of jurisdiction of courts was intended. This court finally concluded that having regard to the authorities cited at the Bar, it was persuaded to hold that the plaintiffs have a right to bring the suit for declaring the transactions to be void, and also for rectification of the Register of Members.

16. In my opinion, the observations of this court in **Shirish Finances' case (supra)** would also be applicable to the case on hand. In view of this, in my opinion,

there is no substance in the petition. Petition is, therefore, rejected.

17. At this stage, the learned counsel for the petitioners states that the proceedings pending in the City Civil Court at Bombay be stayed for some time. the learned counsel for the respondents strenuously objects. In the circumstances of the case, Notice of Motion No.5861 of 2000 in S.C. Suit No.6882 of 2000 is stayed for a period of six weeks from today.

(SMT. RANJANA DESAI, J.)